



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,364	09/26/2000	ANNE K. WINIEWICZ	102689-56	4774

21125 7590 03/21/2005

NUTTER MCCLENNEN & FISH LLP
WORLD TRADE CENTER WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2604

EXAMINER

DALENCOURT, YVES

ART UNIT PAPER NUMBER

2157

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/669,364

Applicant(s)

WINIEWICZ ET AL.

Examiner

Yves Dalencourt

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is responsive to amendment filed on 12/03/04.

Response to Amendment

The examiner has acknowledged the amended specification, the amended abstract, and the submission of new claim 32. The rejections of claims 1 and 23 under 35 U.S.C. 112 first and second paragraphs have been withdrawn.

Response to Arguments

Applicant's arguments filed on 12/03/04 have been fully considered but they are not persuasive.

Applicant(s) asserted that Fletcher fails to teach or suggest sending a data summary corresponding to current statistical data from the agents to the collector, much less sending such summary data at a selected periodic rate. In addition, Fletcher does not teach terminating transmission of current statistical data to a central process, such as the collector, and modifying the periodic rate at which the summary data is sent upon detection of a predetermined condition. In particular, Fletcher does not teach modifying the periodic rate at which the summary data is transmitted from a "second" period (the rate utilized for transmission of summary data before detection of the condition) to a "first" period (the rate utilized for transmission of current statistical data before detection of the condition)(paragraph bridging pages 14 and 15).

The examiner disagrees with the precedent assertion. The examiner kindly submits that the applicant(s) misread the applied references used in the rejection. Actually, applicants are interpreting the claims very narrow without considering the broad teaching of the references used in the rejection. The aforementioned assertion wherein Fletcher fails to teach applicant's claimed features as recited above, was unsupported by objective factual evidence and was not found to be substantial evidential value. For example, Fletcher teaches that to facilitate proper time-based ordering of captured packets at the collector and to ensure that statistics are placed into the proper time period buckets, statistics and packets coming from the Agents to the collector are time-stamped by the agents. In order to accomplish this time-stamped, each agent maintains a clock, derived from its system clock. To be meaningful, the clocks in each agent must be kept fairly close to those of its peers and their collector, although precise alignment is generally not possible. In order to keep agent time-stamps aligned, the collector sends out a time synchronization message periodically. These messages may also be used to trigger the return of statistics from the Agents. Each agent sets a random delay interval before sending the data to prevent flooding the collector. Moreover, Fletcher teaches that the collector also times-out an agent if it does not receive a response to a series of multicast polls for a prolonged period (see col. 8 through col. 15). For this assertion to have merit, it is important to applicants provide some forms of evidence that convincingly show that examiner's references do not meet the claims language. Furthermore, Applicants are reminded that 37 CFR 1.111(b) states, "a general allegation that the claims define a patentable invention without

Art Unit: 2157

specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirement of this section". Thus, applicants' assertions are just mere allegation with no supported fact by failing to specifically point out how the language of the claims patentably distinguished them from the cited references. Applicants are reminded that the examiner is entitled to the broadest reasonable interpretation of the claims. The Applicants always have the opportunity to amend the claims during prosecution and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater 162 USPQ 541, 550-51 (CCPA 1969). Hence the 35 U.S.C 102 is hereby sustained.

In view of such, the rejection is sustained and repeated as follows:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 4, 11 – 16, 23 – 25, and 29 - 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Fletcher et al (US 6,108,782; hereinafter Fletcher).

Regarding claims 1, 12 – 13, 16, 23 – 24, and 29 – 32, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, which comprises the steps of sending a first current statistical data sample from a first card to a central process within the network device periodically at a first period; sending a first data summary from the first card to the central process periodically at a second period (col. 8 – 15; Fletcher discloses agents running on interface cards for collecting network statistical data for MIB variables requested); detecting a predetermined condition (col. 15, lines 39 - 47); sending the first data summary from the first card to the central process periodically at the first period (col. 8 - 15); and ceasing to send the first current statistical data sample from the first card to the central process periodically at the first period (col. 15, lines 48 – 59; Fletcher discloses that the collector times-out an agent if it does not receive a response to a series of multicast polls for a prolonged period).

Claim 23 adds the limitations of a plurality of cards (see col. 15, lines 61 – 64).

Regarding claims 4 and 25, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, which further comprising the steps of gathering the first current statistical data sample on the first card periodically at the first period; and adding the first current statistical data sample to the first data summary each time the first current statistical data sample is gathered (see col. 8 – 15, Fletcher discloses that statistical data is gathered periodically).

Regarding claim 11, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, wherein the second period is longer than the first period (col. 15 – 20).

Regarding claim 14, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, which further comprises the steps of receiving the first current statistical data sample from the first card at the central process; storing the received first current statistical data sample in a file in non-volatile memory; retrieving the file from the non-volatile memory through an export process; and sending the file from the network device to an external file system (paragraph bridging col. 20, line 64 through col. 21, line 12).

Regarding claim 15, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, wherein the export process is a file transfer protocol (FTP) client process and wherein sending the file from the network device to an external file system comprises: issuing an FTP push (col. 4, lines 55 – 67).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 2 – 3, 5 – 10, 17 – 22, 26 - 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher et al (US 6,108,782; hereinafter Fletcher).

Regarding claims 2 - 3, 7 – 10, 26 – 28, Fletcher teaches all the limitations in claim 1, but fails to specifically teach the steps of sending a second current statistical data sample from a second card to the central process within the network device periodically at the first period; sending a second data summary from the second card to the central process periodically at the second period; detecting the predetermined condition; sending the second data summary from the second card to the central process periodically at the first period; and ceasing to send the second current statistical data sample from the second card to the central process periodically at the first period as claimed.

However, Fletcher does disclose that collectors and agents may be designed to operate effectively with a number of different network interface cards (NICs) and NOS architectures and a number of different management applications. Such cards can be attached to different network segments and recorded information about those segments (paragraph bridging col. 15, line 61 through col. 16, line 2). It would be advantageous for the central process to be able to collect data from all the cards located in a network device in order to receive accurate information of the network segments.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have recognized that Fletcher's device is at least functionally equivalent to the claimed invention because Fletcher suggests using a number of different network interface cards (NICs), and NOS architectures and a number of different management applications for the purpose of allowing the management system to be adapted to different operating environments while localizing the interoperability design issues to the module(agent or collector) necessary for interface with that system.

Regarding claim 5, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, which further comprises the steps of gathering the second current statistical data sample on the second card periodically at the first period; and adding the second current statistical data sample to the second data summary each time the second current statistical data sample is gathered (see col. 8 –15, Fletcher discloses that statistical data is gathered periodically).

Regarding claim 6, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, which further comprises the steps of gathering the second current statistical data sample on the first card periodically at the first period; and adding the second current statistical data sample to the second data summary each time the second current statistical data sample is gathered (col. 8 - 15).

Regarding claims 17 - 22, Fletcher teaches a method of managing distributed statistical data retrieval in a network device, which further comprises the steps of receiving the first current statistical data sample from the first card at the central process; storing the received first current statistical data sample in a first file in

non-volatile memory, wherein the first file corresponds to a first string name associated with the first current statistical data sample; receiving the second current statistical data sample from the second card at the central process; comparing a second string name associated with the second current statistical data sample with the first string name; storing the received second current statistical data sample in the first file if the second string name matches the first string name; and storing the received second current statistical data sample in a second file if the second string name does not match the first string name (see col. 15 – 18).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 2157

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yves Dalencourt whose telephone number is (571) 272-3998. The examiner can normally be reached on M-TH 7:30AM - 6: 00PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Yves Dalencourt



March 3, 2005



ARIO ETIENNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100